

# Driver Licensing And Identification Card Issuance ACTION/ISSUE STATEMENT

## Short Description:

Regulations to Implement HB 1954/SB 1068

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## Decision Issue:

Whether DMV should promulgate regulations to implement the provisions of HB 1954 and SB 1058, based upon language in the enactment clause which states: "On or before December 1, 2003, the Department of Motor Vehicles, after consultation with the Office of the Attorney General, shall report to the General Assembly the content of regulations that the Department of Motor Vehicles intends to promulgate to carry out the provisions of this act". (Note, this mandate would appear to apply to all provisions of this act, both the legal presence provisions, as well as the Patriot Act/Hazmat provisions.)

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## Impact and Challenges:

An important consideration in the decision of whether or not to promulgate regulations is the language of the enactment clause. The language does not mandate regulations, but merely states that DMV is to report the content of regulations it intends to promulgate. If it is determined that regulations would not be advisable or warranted, then the agency would be well advised to report to the General Assembly the rationale for not promulgating regulations and the policies/procedures that will be implemented.

In considering whether or not to promulgate regulations, the agency's experience with the residency regulations should be noted. DMV is currently in the process of repealing the residency regulations, because the regulations significantly hindered agency flexibility in administering the residency requirement. A list of acceptable documents was set forth in the regulations and hence, modification of the list to eliminate documents that are not reliable as proof of Virginia residency has required regulatory action (emergency regulatory action and repeal of the regulations.) Thus, in deciding whether or not to promulgate regulations, considerations as to whether regulations are advisable or warranted, the as well as the complexity of the regulations, should be included. Finally, the decision should be made in light of the manner in which other aspects of the document issuance process is administered.

The challenge presented by this issue is how to ensure public participation to the extent necessary to accomplish the intent of the legislation in a fair and equitable manner, that is least burdensome on those impacted by the legislation.

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**DMV Recommended Decision:**

DMV would recommend that regulations not be implemented in order to carry out the provisions of this legislation. DMV believes that the legislation contains sufficient specificity for implementation of the legal presence requirement that regulations are not needed or warranted. The agency is also concerned that regulations may hinder the ability and potential need to remain flexible in administering the legislation. (Currently DMV is examining the federal rules pertaining to implementation of the Patriot Act's hazmat requirements that were recently issued and will be examining the question of whether regulations need to be promulgated at the state level for complete implementation of the federal hazmat requirements.)

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**DMV Commissioner's Signature**

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**Date**

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**Panel Recommended Decision:**

The panel approved the above recommendation.

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**Panel's Signature**

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**Date**

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**Secretary's Recommended Decision:**

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**Secretary's Signature**

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**Date**

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**Governor's Recommended Decision:**

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**Governor's Signature**

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**Date**